

“emergency” situations. It did this by directing ED to waive or modify student loan provisions that it found necessary to “ease the burden” on loan recipients and to “ensure” that the emergency did not place them in a “worse position,” among other things. Id. §1098bb(a)(2). It also did this by directing “no delay” in the implementation of ED’s waivers and modifications. Id. §1098bb(d).

Consistent with these aims, CRA also specifically contemplates the possibility of emergency actions requiring immediate implementation. As a general matter, rules subject to CRA may not become effective for 60 days pending Congress’s review and potential enactment of a disapproval measure. 5 U.S.C. §801, 802. But Congress in CRA allowed agencies to find for “good cause” that normal delays are “impracticable, unnecessary, or contrary to the public interest,” and the agency’s rule may then take effect at such time as the agency determines. 5 U.S.C. §808(2). As in B-290125.2, then, applying CRA’s requirements does not “interfere” with and “would not prevent” ED from carrying out emergency actions under the HEROES Act. B-290125.2, B-290125.3, Dec. 18, 2002. If ED believes that its Waivers and Modifications must take immediate effect—as appears to be the case—then it need only make a “good cause” finding consistent with CRA’s requirements.

Context considerations provide additional support for our conclusion that Congress did not mean to exempt HEROES Act actions from CRA. First, CRA itself contains a clause indicating that it should apply “notwithstanding any other provision of law.” 5 U.S.C. §806(a). While this alone is not definitive, Congress in the HEROES Act took express action to override certain other provisions without taking comparable action on CRA. Specifically, Congress said that HEA’s negotiated rulemaking requirements “shall not apply,” and that the HEROES Act’s public-reporting requirement would apply “notwithstanding” the normal reporting requirements applicable to ED under GEPA and APA (which GEPA references). 20 U.S.C. §1098bb(d). If we interpret the “notwithstanding” clause literally, as ED urges us to do, then it was not necessary for Congress to make any of these additional carve-outs because neither HEA, nor OEPA, nor APA references the HEROES Act. U.S.C. §553, 20 U.S.C. §§1089(c), 1098a, 1232. Clearly, then, Congress contemplated that procedural requirements like those in HEA, GEPA, and APA could continue in force without presenting any conflict with the “notwithstanding” clause; the HEROES Act needed to address these provisions specifically to exempt ED from their requirements.

ED also asserts that the HEROES Act speaks definitively “to the role of Congress vis-à-vis waivers and modifications” with “its own mechanism of congressional reporting.” Response Letter at 6. As described above, the HEROES Act requires ED to provide Congress with an “impact report” no later than 15 months after it provides any waiver or modification. Id. §1098bb(c). On its face, this reporting requirement does not displace the purpose of CRA and its requirements, which trigger before an agency takes action. It would be wholly consistent with both CRA and the HEROES Act for an agency to first submit a CRA report (and find “good cause” to forego the normal requirements), and then to take action pursuant to the HEROES Act, and then to report on the impact of such actions within 15 months. See 8-333501, Dec. 14, 2021 (finding that the Centers for Disease Control and Prevention (CDC) had to submit a CRA report in connection with new masking requirements, but that it could address the need for emergency implementation through a good cause waiver;

8-333732, Jul. 28, 2022 (“While CRA does not provide an emergency exception from its procedural requirements . . . (it) addresses an agency’s need to take emergency action without delay.”). Indeed, over the course of the COVID-19 public health emergency, several agencies have submitted rules for congressional review while waiving the delay in effective date by invoking CRA’s good cause exception. See, e.g., B-33486, Aug. 10, 2021; B-333381, Jul. 9, 2021; B-332918, Feb. 5, 2021.

Issues before the Supreme Court

With this decision, we are not addressing the questions currently before the Supreme Court in *Biden v. Nebraska*, which include whether ED’s Waivers and Modifications “exceed[ed] the Secretary [of Education]’s statutory authority or [were] arbitrary and capricious.” See Supreme Court Docket No. 22-506, Questions Presented (Dec. 1, 2022), available at <https://www.supremecourt.gov/docket/docketfiles/html/gp/22-00506qp.pdf>. For present purposes, we treat the Waivers and Modifications as an exercise of the HEROES Act authority that ED invoked to support them. We hold only that a valid exercise of authority under the HEROES Act is subject to CRA. We need not reach the more specific conclusion about the substantive validity of ED’s Waivers and Modifications at issue in the Supreme Court’s decision in *Biden v. Nebraska* in order to reach a conclusion under CRA.

CONCLUSION

ED’s Waivers and Modifications meet the definition of a rule under CRA and no exception applies. Therefore, ED’s Waivers and Modifications are subject to the requirement that they be submitted to Congress. If ED finds for good cause that normal delays are impracticable, unnecessary, or contrary to the public interest, then its rule may take effect at whatever date ED chooses, consistent with CRA. 5 U.S.C. §808(2).

EDDA EMMANUELLI PEREZ,
General Counsel.

ARMS SALES NOTIFICATION

Mr. MENENDEZ, Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive prior notification of certain proposed arms sales as defined by that statute. Upon such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales shall be sent to the chairman of the Senate Foreign Relations Committee.

In keeping with the committee’s intention to see that relevant information is available to the full Senate, I ask unanimous consent to have printed in the RECORD the notifications which have been received. If the cover letter references a classified annex, then such annex is available to all Senators in the office of the Foreign Relations Committee, room SD-423.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEFENSE SECURITY
COOPERATION AGENCY,
Washington, DC.

Hon. ROBERT MENENDEZ,
*Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended,

we are forwarding herewith Transmittal No. 23-12, concerning the Navy’s proposed Letter(s) of Offer and Acceptance to the Government of Greece for defense articles and services estimated to cost \$268 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

MIKE MILLER

(For James A. Hursch, Director).

Enclosures.

TRANSMITTAL NO. 23-12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Government of Greece).

(ii) Total Estimated Value:

Major Defense Equipment * \$163.3 million.

Other \$104.7 million.

Total \$268.0 million.

Funding Sources: National Funds (\$243.0 million). Foreign Military Financing (\$25.0 million).

(iii) Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:

Major Defense Equipment (MDE):

Sixty-three (63) Assault Amphibious Vehicles, Personnel Variant (AAVP-7A1).

Nine (9) Assault Amphibious Vehicles, Command Variant (AAVC-7A1).

Four (4) Assault Amphibious Vehicles, Recovery Variant (AAVR-7A1).

Sixty-three (63) 50-Caliber Machine Guns (Heavy Barrel).

Non-MDE:

Also included are MK-19 Grenade Launchers; M36E T1 Thermal Sighting Systems (TSS), supply support (spare parts), support equipment (including special mission kits/tools/Enhanced Appliance Kits (EAAK)), training, technical manuals (UNCLASSIFIED), technical data, U.S. Government and contractor engineering, technical support and assistance (including Contractor Engineering Technical Services (CETS)), Integrated Logistic Support (ILS) management services, parts obsolescence remediation, calibration services transportation, Follow-on Support (FOS), Return, Repair and Reshipment of unserviceable repairable items/equipment, applicable software and apparel, and other related elements of logistics and program support.

Military Department: Navy (GR-P-SCO).

Prior Related Cases, if any: None.

Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex.

(viii) Date Report Delivered to Congress: March 17, 2023.

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece—Assault Amphibious Vehicles

The Government of Greece has requested to buy sixty-three (63) Assault Amphibious Vehicles, Personnel Variant (AAVP-7A1), nine (9) Assault Amphibious Vehicles, Command Variant (AAVC-7A1), four (4) Assault Amphibious Vehicles, Recovery Variant (AAVR-7A1), and sixty-three (63) 50-Caliber Machine Guns (Heavy Barrel). Also included are MK-19 Grenade Launchers, M36E T1 Thermal Sighting Systems (TSS), supply support (spare parts), support equipment (including special mission kits/tools/Enhanced Appliance Kits (EAAK)), training, technical manuals (UNCLASSIFIED), technical data, U.S. Government and contractor engineering, technical support and assistance (including Contractor Engineering Technical Services (CETS)), Integrated Logistic Support

(ILS) management services, parts obsolescence remediation, calibration services, transportation, Follow-on Support (FOS), Return, Repair and Reshipment of unserviceable repairable items/equipment, applicable software and apparel, and other related elements of logistics and program support. The estimated total cost is \$268 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a NATO ally, which is an important partner for political stability and economic progress in Europe.

This proposed sale will improve Greece's capability to meet current and future threats by providing an effective capability to protect maritime interests and infrastructure in support of its strategic location on NATO's southern flank. Greece contributes to NATO operations, as well as to counterterrorism and counter-piracy maritime efforts. Greece will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

There is not a principal contractor associated with this potential sale. Consequently, there are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government personnel, but will require one (1) contractor representative, Full-Time Equivalent (FTE) position to Greece to deliver Assault Amphibious Vehicles, related equipment and support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

TRANSMITTAL NO. 23-12

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) Sensitivity of Technology:

1. The mission of the Assault Amphibious Vehicle (AAV) is to maneuver surface assault elements of the landing force and their equipment from assault shipping during amphibious operations to inland objectives and to conduct mechanized operations and related combat support in subsequent operations ashore.

The AAV-7A1 Family of Vehicles includes the Personnel variant which carries troops in amphibious operations from ship to shore, through the surf zone and to inland objectives. The AAVP-7A1 provides protected transport for up to 25 combat-loaded personnel through all types of terrain. The Command Variant, AAVC-7A1, is an armored assault amphibious full-tracked landing vehicle. The vehicle provides a mobile task force communication center in amphibious operations from ship to shore through the surf zone to inland objectives. The Recovery Variant, AAVR-7A1, is an armored assault amphibious full-tracked vehicle. The vehicle is designed to recover similar or smaller sized vehicles. It also carries basic maintenance equipment to provide field support maintenance to vehicles in the field.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Greece can provide substantially the same

degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to Greece.

CERTIFICATION PURSUANT TO 620C(d) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

Pursuant to Section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163, State Department Delegation of Authority No. 293-2, and State Department Delegation of Authority 510; I hereby certify that the furnishing to Greece of Amphibious Assault Vehicles and related defense articles and services is consistent with the principles contained in Section 620C(b) of the Act.

This certification will be made part of the notification to Congress under Section 36(b) of the Arms Export Control Act, as amended, regarding the proposed sale of the above-named articles and services and is based on the justification accompanying such notification, of which such justification constitutes a full explanation

BONNIE JENKINS

*Under Secretary for
Arms Control and
International Security.*

REMEMBERING JUDY HEUMANN

Mr. CASEY. Mr. President, I rise to join my colleagues in honoring the life of Judy Heumann, one of the most important disability and civil rights leaders of our time.

While Judy spent most of her childhood and early adult life in New York, she is a native Pennsylvanian, born in Philadelphia in 1947. She was an advocate for disability equality and access to education from an early age. When her mother attempted to enroll her in public kindergarten, the school principal denied her admission because Judy's wheelchair was determined to be "a fire hazard." That determination wasn't by any official means; it was only in the opinion of a principal who had the power to bar her from receiving an education. It took over 4 years for Judy's parents to find a school where she could enroll, starting regular attendance at school at the age of 9.

At the start of her adult life, Judy experienced similar discrimination when the New York City schools denied her a job as a teacher, despite having passed all requirements but one, the physical examination. Judy sued the New York City Public Schools and won her case and was hired as the first teacher with a disability in the New York City schools. That was 1970.

One year later, partly inspired by the successful advocacy of Judy, Pennsylvania parents of children with intellectual disabilities filed suit to secure enrollment of their children in Pennsylvania public schools. That successful case, known as *PARC v. Pennsylvania*, was the foundation for the 1975 Education of All Handicapped Children Act, now known as the Individuals

with Disabilities Education Act, or IDEA.

After many years of advocacy, that included the development and passage of IDEA and the Americans with Disabilities Act, Judy was appointed by President Clinton to be the Assistant Secretary of Special Education and Rehabilitation Services in the Department of Education, a position she held from 1993 to 2001.

With that appointment, Judy had come full circle, from being barred from attending public school as a kindergartener, to being responsible for ensuring public schools across the country were accessible to and educating all children with disabilities.

Successfully advocating for such groundbreaking change in education of children with disabilities would have been enough for one life, but Judy did much more than advocate to secure access to education for children with disabilities. Her work included implementation of section 504 of the Rehabilitation Act, which requires all governments and public entities that receive Federal funding to ensure their services and settings are accessible to people with disabilities. She was a key partner with Democrats and Republicans in the writing and implementation of the Americans with Disabilities Act in 1990 and the Americans with Disabilities Act Amendments in 2008.

Judy's work was not limited to the United States. In 1983, Judy, along with Ed Roberts, one of the fathers of the disability rights movement, established the World Institute on Disability. She felt that the disability rights achieved in America needed to be spread throughout the world. Judy became the first Advisor on Disability and Development at the World Bank in 2002. And in 2010, President Obama appointed her to the position of Special Advisor on International Disability Rights at the State Department, a role she filled until 2017.

Along the way, Judy rarely forgot that she was working for individual people with disabilities. When visiting countries, she made it a point to seek out young people with disabilities and encourage them to speak out and to become leaders in their own towns, districts, States, and countries. She knew the power of policy to change lives and the importance of individuals to implement that change.

Judy Heumann changed the world in big and small ways for people with disabilities and all of us.

ADDITIONAL STATEMENTS

RECOGNIZING JERALD SULKY COMPANY

• Ms. ERNST. Mr. President, as ranking member of the Senate Committee on Small Business and Entrepreneurship, each week I recognize an outstanding Iowa small business that exemplifies the American entrepreneurial